

FCC - MAILROOM

MM Docket No. 01-244
RM-10234

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PETITION FOR RECONSIDERATION

I.

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II.

As will be detailed with greater specificity herein, the Order was based on incorrect information and its adoption was arbitrary and capricious, an abuse of discretion and contrary to law.

III.

The Order was issued under delegated authority by the Chief of the Video Division of the Commission's Media Bureau. That individual may have lacked impartiality and been prejudiced against IBN because of IBN's being an evangelical Christian organization, a point that Civic License Holding Company, Inc. ("Civic") sought to exploit on more than one occasion. Moreover, that individual's misconduct was alleged in a previous proceeding which ultimately was the subject of judicial review by the Court of Appeals for the District of Columbia Circuit. Furthermore, it is a matter of public knowledge that there is a revolving door between the Commission and the law firm representing Civic and that the firm has influence that goes beyond its legal expertise. Under all of these circumstances, the decision-maker in the instant proceedings could not have been impartial and should have recused herself.

IV.

The Order failed to deal with, or even mention, the issue of notice. As the comments and reply comments made quite clear, Civic failed to provide to IBN the notice required by the Commission's Rules with respect to various documents Civic filed with the Commission. That failure was highly prejudicial to IBN, and it should have disqualified Civic from receiving the relief it sought.

V.

The Order appears to accept everything Civic said in its comments and reply comments even though Civic provided no substantiation whatsoever. Civic offered not a scintilla of evidence to support its false claims, and it certainly did not meet its burden of proof

VI.

The Order appears to either ignore or summarily reject everything all parties other than Civic said in their comments. The comments filed by the City of Lufkin were not even mentioned or otherwise acknowledged. Those filed by the **Lufkin** Independent School District, Lufkin Educational Broadcasting Foundation, Media Services Group **of** East Texas and others were briefly alluded to but did not appear to be taken into consideration in any kind **of** meaningful way. Moreover, the petitions of thousands of persons residing within the coverage areas of Civic's stations, the number and content **of** which were sworn to by an independent certified public accountant whose affidavits are included in the record, were rejected because, "The signers did not provide any reason to support their conclusion." Such a statement reflects an incredible disdain for the public whose interest the Commission is obligated to protect. Each signer of a petition obviously had his or her own reason to support IBN's opposition to the proposed substitution of channels despite the **misinformation** campaign that was launched by Civic in a failed attempt to mislead the public and thwart the public will. The Order's unreasoned rejection of the public comments and petitions reflects a failure to acknowledge that the public interest is paramount to the private financial interests **of** Civic.

VII.

The Order's gratuitous and profuse endorsement of Civic, including particularly its reference to Civic's "cooperative spirit," is unjustified and lacks any factual basis whatsoever. Similarly, the Order's statements that "Civic has attempted to ease the impact of its proposed channel substitutions on the operation of low power stations KIBN and KLGW" and that Civic "has apparently offered other assistance to IBN" are unjustified and misleading. These are the kind of unsupported and misleading statements that one would expect Civic to write, and they reflect a profound lack of objectivity.

VIII.

As the record reflects, the FCC, using a computer program designed to avoid unnecessary displacements, allocated DTV channels **38** and **43** to Civic. Civic applied for and was granted construction permits to build its DTV facilities on those allocated channels. Those construction permits are still in effect, having been extended twice, and there is no legitimate reason whatsoever that construction should not proceed in accordance with those construction permits. Civic's quest to take **IBN's** channels rather than to build on the allocated channels was pursued with the knowledge that the proposed substitutions, if granted, would cause enormous harm to IBN. It is unconscionable that the Commission would allow Civic to inflict injury **on IBN's** stations, which have a proven record of public service, the strong support of public officials and community leaders and a large audience of loyal viewers.

IX.

The Commission is required **by** the Communications Act of **1934** to act in the

public interest. In these proceedings, it has not done so.

X.

The Commission is also required to abide by the Constitution of the United States. The Fifth Amendment expressly prohibits takings of property without due process and just compensation. There is a growing body of case law that applies that prohibition to regulatory takings. In the instant proceedings, IBN's licensed channels are being taken away for the benefit of Civic, a commercial enterprise. That is repugnant to the Constitution.

XI.

The Equal Protection Clause of the Constitution may also apply. The Commission's establishment of favored classes of television stations is repugnant to this provision of the Constitution and to contemporary standards of fairness. The Commission should not treat **IBNs** stations as though they were less important or less worthy of protection than Civic's stations. A caste system within broadcasting is inappropriate. Small broadcasters like IBN are no less important to their viewers and the communities they serve than the more favored classes of broadcasters. **No** station should be considered to be expendable. **IBN** recognizes, however, that this is not the prevailing view at the Commission.

XII.

There is no statutory or regulatory provision that requires that channel substitutions be granted. Within the constraints of the Constitution, statutes and administrative rulings and precedents, the Commission has broad discretion to **grant** or

deny such substitutions. It may not do ~~so~~, however, in disregard of the public interest, in violation the Constitution or in violation of the Communications Act of 1934, the Administrative Procedure Act or any other federal statute. In these proceedings, there has been an appalling disregard for constitutional and statutory requirements ~~as~~ well as fundamental standards of fairness and due process.

XIII.

Civic's contention that the Commission may not consider allegations of misconduct in the context of an allotment proceeding, a position uncritically reflected in footnote 7 of the Order, is ~~unpersuasive~~. The cited cases can be easily distinguished because they involved alleged wrongdoing that was unrelated to the rule making. In the instant proceedings, ~~IBN~~ has documented wrongdoing, including misrepresentations, committed by Civic within the context of the rule making and directly related thereto. Such wrongdoing is clearly relevant and must not be ignored.

XIV.

For reasons of brevity and time constraints, IBN has used the term "Civic" herein when referring to Civic License Holding Company, Inc., or any of its many affiliated entities or alter egos. It is undisputed, however, that The Liberty Corporation, of Greenville, South Carolina, is the actual owner and operator of the stations formerly licensed to Civic License Holding Company, Inc., and that CivCo, Inc. ("CivCo"), of Reno, Nevada, is the current licensee of those stations. LibCo, Inc., also of Reno, Nevada, is a corporate twin of CivCo and ~~has~~ the same officers and ownership. The Order, however, fails to acknowledge CivCo as the stations' licensee. Moreover, the

record in this proceeding, as shown on the Commission's website, does not contain any statement by CivCo in compliance with the requirements of Paragraph 2 of the Appendix to the Commission's Notice of Proposed Rule Making adopted September 14,2001, and released September 19,2001. Since CivCo is the licensee, only CivCo can make that required statement. Furthermore, Civic License Holding Company, Inc., not being the current licensee, cannot comply with Paragraph 10 of the Order.

XV.

For all of the foregoing reasons, and for all of the reasons set forth in **IBNs** previous filings, IBN respectfully urges that the aforementioned Report and Order be reconsidered and that the substitution of channels be rescinded or otherwise nullified.

Respectfully submitted,

INTERNATIONAL BROADCASTING NETWORK

By its President

A handwritten signature in black ink, appearing to read "Paul J. Broyles", written in a cursive style.

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November 7,2002

CERTIFICATE OF SERVICE

I, Paul J. Broyles, hereby certify that on this 7th day of November 2002 a copy of the foregoing PETITION FOR RECONSIDERATION ~~has~~ been served by first-class mail, postage prepaid, upon the following:

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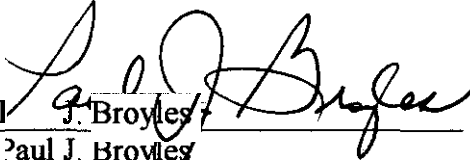
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